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Board of Vocational Nursing and Psychiatric Technicians

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BEFORE THE BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. VN-2006-1185

JOSEPH EUGENE GRAHAM 9920 19th Street #36 Alta Loma, CA 91737

Vocational Nurse License No. VN 211480

Respondent.

ACCUSATION

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Complainant alleges:

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1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this

PARTIES

20 Accusation solely in her official capacity as the Executive Officer of the Board of Vocational

21 Nursing and Psychiatric Technicians, Department of Consumer Affairs.

2. On or about October 13, 2004, the Board of Vocational Nursing and

Psychiatric Technicians, Department of Consumer Affairs issued Vocational Nurse License No.

VN 211480 to Joseph Eugene Graham ("Respondent"). The Vocational Nurse License was in

full force and effect at all times relevant to the charges brought herein and will expire on August

26 | 31, 2008, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians, ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 2878 of the Code states:

"The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

- "(a) Unprofessional conduct, which includes, but is not limited to, the following:
- "(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction.
 - 5. Section 2878.5 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person licensed under this chapter to do any of the following:

- "(b) Use any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.
- "(c) Be convicted of a criminal offense involving possession of any narcotic or dangerous drug, or the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, in which event the record of the conviction is conclusive evidence thereof.

6. Section 2878.8 of the Code states:

"The board may deny any application or may suspend or revoke any license issued under this chapter [the Vocational Nursing Practice Act] based upon the denial of licensure, suspension, restriction, or other disciplinary action of a license by another state, any other government agency, or by another California health care professional licensing board. A certified copy of the finding shall be conclusive evidence of that action provided that, if from another state, the findings establish an act which if committed in California would be grounds for discipline."

7. Section 2875 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board of Vocational Nursing and Psychiatric Technicians ("Board") may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

8. Section 490 of the Code states:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

- 9. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.
- 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or

violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crimes)

- 11. Respondent is subject to disciplinary action under Section 2878 (f) of the Code in that he has been convicted of a crime substantially related to the qualifications, functions and duties of a licensed vocational nurse. The circumstances are as follows:
- 12. On or about or about December 22, 2005, in Proceeding No. 05 AE-CR 04091-01 in the 6th Judicial Circuit Court of Platte County, Missouri, entitled "State of Missouri v. Joseph E. Graham," following entry of a plea of "guilty." Respondent was found guilty and convicted of driving while under the influence of alcohol-persistent offender (Felony D) in violation of Code section 4741000, RSMO: 577.010.

Whereupon, Respondent was ordered into probation and parole for a term of four (4) years, to include entry into and successful completion of an addiction program for substance abuse, do not consume alcoholic beverage, operate vehicle only if legally and properly licensed and insured, and with an installed ignition interlock device, submit to random blood, breath or urine testing as directed, and other conditions.

- (a) The circumstances of the foregoing conviction are that on July 9, 2005, on Interstate 29, near the location of 28 mile marker on Interstate 29, County of Platte, State of Missouri, Respondent operated a motor vehicle while under the influence of alcohol.
- (b) In a prior case, on or about May 13, 1996, Respondent had pleaded guilty to the class D felony of driving while intoxicated for events occurring on or about December 22, 1995 in the Circuit Court of Nodaway County.
- (c) In a prior case, on or about July 27, 1997, Respondent had pleaded guilty to the class D felony of driving while intoxicated for events occurring on or about December 12, 1996, in Circuit Court of Ray County.

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SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

13. Respondent is subject to disciplinary action under section 2878(a) of the Code in that he has committed acts of unprofessional conduct. The circumstances are as follows:

A. The matters alleged in paragraph 12, 12(A), 12(B) and 12(C) are incorporated by referenced.

THIRD CAUSE FOR DISCIPLINE

(Disciplinary Action by Another State Agency Licensing Board)

- 14. Respondent is subject to disciplinary action under section 2878.8 of the Code based upon disciplinary action by another State. The circumstances are as follows:
- (a) Effective October 6, 1999, the Missouri State Board of Nursing issued its Decision admitting respondent to sit for the Board's licensed practical nurse examination. In the event Respondent should pass the examination, he would be issued a probated license for a period of three (3) years issued upon numerous terms and conditions.
- (b) As cause for denial of said license, the Board alleged that Respondent had: on or about November 3, 1987, in the Circuit Court of Achison County, Missouri, plead guilty to stealing.
- (c) As cause for denial of said license, the Board alleged that Respondent had: on or about September 12, 1989, plead guilty to felony burglary.
- (d) As cause for denial of said license, the Board alleged that Respondent had: on or about August 20, 1991 in the Circuit court of Nemaha County, Nebraska, been convicted of driving while intoxicated.
- (e) As cause for denial of said license, the Board alleged that Respondent had: on or about October 29, 1991, in the Circuit Court of Nodaway County, Missouri, been convicted of driving while intoxicated.
- (f) As cause for denial of said license, the Board alleged that Respondent had: on or about April 8, 1996, in the Circuit Court of Nodaway County, Missouri, been

1	convicted by guilty plea of driving while intoxicated and misdemeanor possession of a controlled
2	substance.
3	FOURTH CAUSE FOR DISCIPLINE
4	(Conviction of a Drug or Alcohol Related Crime)
5	15. Respondent is subject to disciplinary action under section 2878(b) and 490
6	of the Code in that he has been convicted of drug or alcohol related crimes. The circumstances
7	are alleged as follows:
8	(A) The matters alleged in paragraphs 12, 12 (A), 12(c), 14(d), 14(e),
9	14(f) and 14(g) are incorporated by reference.
10	<u>PRAYER</u>
11	WHEREFORE, Complainant requests that a hearing be held on the matters herein
12	alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric
13	Technicians, Department of Consumer Affairs issue a decision:
14	1. Revoking or suspending Vocational Nurse License No. VN 211480, issued
15	to Joseph Eugene Graham;
16	2. Ordering Joseph Eugene Graham to pay the Board of Vocational Nursing
17	and Psychiatric Technicians, Department of Consumer Affairs the reasonable costs of the
18	investigation and enforcement of this case, pursuant to Business and Professions Code section
19	125.3;
20	3. Taking such other and further action as deemed necessary and proper.
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22	DATED: April 29, 2008
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24	TERESA BELLO-JONES, J.D., M.S.N., R.N.
25	Executive Officer Board of Vocational Nursing and Psychiatric Technicians
26	State of California Complainant
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